

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015110673

ORDER DENYING MOTION TO  
DISMISS AS MOOT

On November 13, 2015, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Mt. Diablo Unified School District.

On November 30, 2015, District filed a Motion to Dismiss, alleging that Student's Issue One is beyond the two-year statute of limitations.

On November 30, 2015, Student filed a response indicating Student would file an amended complaint which conformed to the two-year statute of limitations, and which was filed that date.

APPLICABLE LAW

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

DISCUSSION

On November 30, 2015, Student filed an amended complaint thereby rendering District's Motion to Dismiss moot. However, nothing prevents District from refiling its motion to dismiss if Student's motion to amend is denied, or as to any allegations in the amended complaint.

ORDER

District's Motion to Dismiss is denied as moot.

IT IS SO ORDERED.

DATE: December 3, 2015

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings